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In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 582

TRIPLE "AAA" COMPANY, INC., and D. G. CARPENTER,
*Petitioners,*

VERSUS

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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August, 1967

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-0030

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Comes now the petitioners above named and show to the Court that on July 5, 1967, the United States Court of Appeals Tenth Circuit affirmed the judgment of the United States District Court for the Western District of Oklahoma, in which the last named court the petitioners were defendants, and the respondent was plaintiff.

The opinion not having yet been published is attached to this petition as an Appendix.

## STATEMENT OF THE CASE

### I.

The Secretary of Labor commenced this suit in the United States District Court by authority of 29 U.S.C.A.,

Art. 217, to enjoin alleged violations of the Fair Labor Standards Act of 1938, 29 U.S.C.A., Arts. 201-219, as amended.

II.

The trial court enjoined the petitioners and ordered the petitioners to pay the four (4) employees involved, the sum of $2,557.69.

III.

This case presents an unusual situation by reason of the fact that all of the four (4) employees involved were receiving substantial compensation and had been employed for many years by the petitioners. Charles V. Brown has been employed since 1952 and was paid at a rate of $1.96 per hour and at the rate of $2.94 per hour for the four hours' overtime each week. This rate was the rate in 1965. This suit was filed April 22, 1965. All of the employees testified that the petitioners agreed to pay a sum each month and, also, they were to work forty-four (44) hours per week. Every employee knew the exact amount he or she was being paid for the forty (40) hours per week and the amount for the four (4) hours' overtime each week. This was written into the face of every check given to the employees.

The employees testified that they were satisfied and asked the court, in effect, to dismiss the case but the respondent insisted on prosecuting the case in the face of the fact that each employee also filed a written request and affidavit stating that he or she had been fully compensated.

This is a small company and it has given to its employees, when possible, large bonuses and, in fact, has put forth a great effort to pay to the employees a very liberal compensation.

The case presents substantially this question:

Can an employer, who pays more than the minimum wage, make an agreement with his employees to pay them a monthly rate far in excess of the minimum wage, and break the payment down, with the knowledge and approval of the employees, into a pay rate for forty (40) hours and time-and-a-half for four (4) hours' additional work by employees on Saturday?

Every employee knew what he or she would receive each month; each employee likewise knew how much was for *"regular time"* and how much was for *"overtime."*

The complaint sets out that the employee, A. B. Carpenter, between November 10, 1962, and November 15, 1964, received a salary of $250.00 semi-monthly or $500.00 per month.

Charles V. Brown received from July 1, 1964 to November 15, 1964, $200.00 semi-monthly, shown as $147.33 regular time and $52.67 overtime.

That Ursula Engelbach, from June 1, 1963 and July 30, 1964, received compensation in the amount of $196.88 semi-monthly, shown $143.00 regular time and $53.60 overtime.

That Gilbert Tuppker, during the work week between November 10, 1962 and November 15, 1964, received $250.00 semi-monthly.

These are the four (4) employees involved.

The employee, A. B. Carpenter, is Vice-President of the Triple "AAA" Company, Inc., and is a stockholder therein.

The employee, Mrs. Ursula Engelbach, was a bookkeeper and was employed by the Company for many years.

The employee, Gerald Tuppker, is Vice-President and a member of the Board of Directors for a period of three (3) years, and owns stock in the Company.

Charles V. Brown, the other employee, complete the employees involved herein. They testified that they understood the vouchers and knew how the time was allocated and compensated for.

We call the Court's attention to the fact that this Court, in *Walling* v. *A. H. Belo, Corporation,* 316 U.S. 624, upheld a similar wage arrangement.

The petitioners now show to the Court that it is necessary for the employees to know how much compensation they will receive per month or per week, as they have obligations and they cannot work without some agreement as to how much they will make. As long as they are paid more than the minimum wage, and as long as they understand how much the compensation is for the forty (40) hours per week, and how much the compensation is for overtime per week, there can be no violation of the law.

The purpose of the Wage and Hour Law, your petitioners believe and, therefore, allege, is to protect the employees, but it is not intended to be used for the purpose of punishing a generous employer based upon an imaginary technical violation.

## SUMMARY

Can an employer assure his employees that he or she will receive a stipulated amount each month, payable, as in this case, semi-monthly, with the further knowledge on the part of the employer and the employees, that this compensation will be broken down into forty (40) hours per week at a certain rate, four (4) hours per week overtime and, in this case, there is written on each check, to each employee, the exact number of hours at "regular time" and the exact amount of "overtime" paid. This is no subterfuge to violate the Law, but is an honest effort by the employer to see that the employees earn a living and fair wages.

## CONCLUSION

We, therefore, most respectfully petition and request this Honorable Court to review this case, as it is one of grave importance to the employer and to the employees; and to grant this petition and reverse the opinion of the United States Court of Appeals Tenth Circuit.

Most respectfully submitted,

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August, 1967